**Dan Carrier, Sole Proprietor, d/b/a Highland House Restaurant *and* Carol Lafferty.** Case 9-CA-20233

31 August 1984

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 15 March 1984 Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified and to adopt the recommended Order as modified.

We agree with the judge that the Respondent violated Section 8(a)(3) and (1) by discharging employee Carol Lafferty and violated Section 8(a)(1) by coercively interrogating another employee. We disagree, however, with the judge's conclusion that the Respondent further violated Section 8(a)(1) by impliedly threatening to close its business if employees selected a union.

The Respondent operates a restaurant in Paintsville, Kentucky. In support of the complaint allegation that the Respondent unlawfully threatened to close its business the General Counsel presented the testimony of waitress Diana Lackey. Lackey testified that on 26 September 1983 Owner Dan Carrier made certain statements pertaining to the alleged closing. Lackey's testimony on this matter is as follows:

> Q. Do you remember him saying that he worked someplace else where they tried to get a union?
>
> A. Once—well, it was that he mentioned about a place before where they had tried to start a union and it didn't work and that it wouldn't work in a restaurant.
>
> . . . .
>
> Q. Okay, now, you said he mentioned another place where they tried to get a union. Did he tell you what happened there?
>
> A. That it didn't work out and that they closed the place down or something to that remark, I don't really remember all of it, but that was the remark, to the best of my knowledge, you know.
>
> Q. Anything else that you remember that he said about a union?
>
> A. No.
>
> . . . .
>
> Q. . . . he talked about a place where he had worked where they tried to get a union. Would you tell us again what he said about that?
>
> A. He just said—I don't really remember exactly where it was or the place that he was—one other time before it had happened, he said that somewhere they had tried to form a union and that they had to shut down the place.
>
> Q. Did he say what happened then?
>
> A. That there was a lot of people that had worked there for years that were without jobs, because they had shut down the place.

The foregoing is the full extent of Lackey's testimony regarding this matter.

Based on Lackey's testimony the judge found that Owner Carrier had made an implied threat to close the restaurant if it became unionized. According to the judge, Carrier's remarks were coercive because Carrier referred to his experience in the closing of a union business that caused the loss of jobs of many senior employees and because Carrier stated that a union would not work in a restaurant.

At the outset it is readily apparent from a fair reading of Lackey's testimony that Carrier did not state directly or indirectly that the other "place" was closed in retaliation for employees' union activities or that unionization necessarily was the causative factor in its closing. On the contrary Carrier's statement that the other business "had to" shut down reasonably implies that it was closed for circumstances beyond its control. Indeed Lackey's testimony regarding Carrier's statements is so patently disjointed and ambiguous as to render wholly speculative any implication that employees would reasonably tend to fear reprisals for engaging in union activities. See *Ohio New & Rebuilt Parts*, 267 NLRB 420, 421 (1983). Thus, for example, although the judge characterized Carrier's remark as referring to Carrier's "experience in the closing of a union business," Lackey's testimony is altogether unclear as to whether Carrier was informing Lackey of his experience as an owner, su-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

At the second paragraph of sec. II,A,1 of his decision the judge inadvertently referred to claims made by "Caudill" in a pretrial affidavit. As noted correctly elsewhere in his decision the affidavit in question was that of Dan Carrier and not Caudill.

pervisor, employee, or in another capacity entirely. It is also evident from Lackey's testimony that Carrier made no specific reference to the future viability of the Respondent's business and made no prediction that adverse consequences likely would befall its operation. Contrary to the judge we do not view Carrier's statement of personal opinion that "a union wouldn't work in a restaurant" as indicative of a coercive implied threat to close the restaurant. Such a statement is squarely protected by Section 8(c) of the Act.

In short, we find there is nothing in Carrier's remarks as set forth by Lackey to indicate that if the Respondent's employees selected a union the Respondent would close the restaurant in reprisal. We shall therefore dismiss that portion of the complaint alleging that the Respondent violated Section 8(a)(1) in this respect. *Daniel Construction Co.*, 264 NLRB 569 (1982).

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Dan Carrier, Sole Proprietor, d/b/a Highland House Restaurant, Paintsville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order as so modified.

1. Delete paragraph 1(c) and reletter the subsequent paragraph.

2. Substitute the attached notice for that of the administrative law judge.

MEMBER ZIMMERMAN, dissenting in part.

Contrary to my colleagues, I would adopt the administrative law judge's finding that the Respondent violated Section 8(a)(1) by impliedly threatening to close the restaurant if the employees selected the Union. The Respondent's owner, Carrier, told employee Lackey that he had worked in a place where employees had tried to start a union, that it did not work out, and that place had to shut down. He also stated that a union would not work in a restaurant. Carrier made these statements only hours after he had unlawfully discharged the instigator of the union campaign. Further, Carrier had unlawfully interrogated Lackey about union activities in the same conversation that he had mentioned the business closing because of a union. Under these circumstances, I agree with the judge that Carrier's statements constituted an implied threat to close the restaurant if it became unionized.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the United Steelworkers of America, AFL–CIO or any other union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Carol Lafferty immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL notify Carol Lafferty that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

DAN CARRIER, SOLE PROPRIETOR, D/B/A HIGHLAND HOUSE RESTAURANT

## DECISION

### STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. This case was tried at Salyersville, Kentucky, January 12 and 13, 1984. The charge was filed October 13, 1983,[1] and

[1] All dates are in 1983 unless otherwise indicated.

the complaint was issued November 21. Restaurant Owner Dan Carrier discharged waitress Carol Lafferty during a union organizing drive. Claiming he was not aware of her union activity, Carrier falsified his pretrial affidavit concerning a purported reason for her discharge.

The primary issues are whether the Respondent, acting through Owner Carrier, (a) coercively interrogated employees about union activity, (b) indicated to an employee that it had to discharge an employee for union activity, (c) threatened to close the restaurant, and (d) discriminatorily discharged waitress Lafferty, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and the Respondent,[2] I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, an individual proprietorship, operates a restaurant at Paintsville, Kentucky, where it annually derives over $500,000 in gross revenues and purchases goods valued over $5000 directly from outside the State. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the United Steelworkers of America, AFL–CIO (Steelworkers) is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *Discriminatory Discharge*

##### 1. Falsified affidavit

Owner Dan Carrier, who summarily discharged waitress Carol Lafferty September 26 without prior warning, gave an admittedly false reason ("the Caudill incident") in his October 26 pretrial affidavit (G.C. Exh. 4) for discharging her. (According to the affidavit, Caudill was a pastor who in the summer temporarily stopped coming to the restaurant with members of his church after being told that a waitress had said "Caudill was the poorest excuse for a pastor she'd ever seen.")

Caudill claimed in the affidavit that

> Sometime the week *before* Lafferty was discharged I learned it was Lafferty who had made the comment about Caudill. . . .
>
> . . . .
>
> My reason for deciding to discharge Lafferty was *her general bad attitude as displayed in the Caudill incident*, her remarks about tension and stirring in problems and wanting to quit. The incident that led to my decision was her comment about stirring in problems. [Emphasis added.]

To the contrary, Carrier admitted at the trial that the Caudill incident was not a reason for his discharging Lafferty.

When called as an adverse witness early in the trial, he made the following admissions (Tr. 19).

> Q. Mr. Carrier, did you learn prior to Carol's discharge of any particular incident between Carol Lafferty and a customer of the restaurant?
>
> A. Yes. Well, no, I didn't learn before that there was a problem with a preacher by the name of James Kelly Caudill.
>
> Q. And you didn't learn that before she was fired?
>
> A. *Afterward.*
>
> Q. *So, you didn't fire her because of it?*
>
> A. *No.*
>
> Q. You've stated before that you fired her because of it, haven't you?
>
> A. No, I don't think I've stated that I fired her for that reason, no. [Emphasis added.]

Later, when called as a defense witness, Carrier again changed his position. He claimed, "That was one of the reasons for discharging her" (Tr. 211). As acknowledged in the Respondent's brief, this was one of the "contradictions" in Carrier's testimony. (From his demeanor on the stand, Carrier impressed me most unfavorably as a witness—appearing willing to fabricate whatever evidence might help the Respondent's cause. I discredit the testimony about an earlier report of Lafferty's involvement in the Caudill incident.)

##### 2. Lafferty's union activity

Carol Lafferty worked at the restaurant as a waitress several months in 1982 before leaving town. On her return to Paintsville in October 1982, Carrier sought her out and rehired her. She was a good waitress, her customers liked her, and customers would ask where she was when she was absent (Tr. 86). Assistant Manager Edward Hurt admitted that she was a good waitress (Tr. 254–255). Before the day of her discharge (as she credibly testified), Carrier had never told her that he did not like her attitude or that she was not serving the customers properly, and had not given her any reason to believe that she was not doing her job or that he was not satisfied with her (Tr. 45). (She appeared on the stand to be an honest, forthright witness.)

Lafferty began the union organizing at the restaurant in early September. She talked to waitress Diana Lackey and Tonuia Murray about a union (the Steelworkers), in the presence of waitress Susan Chandler (Tr. 42, 52). (Murray, who met with Owner Carrier and other witnesses the night before being called by the General Counsel to testify (Tr. 64), denied ever hearing Lafferty make a comment about a union at the restaurant (Tr. 69–70). I discredit her and Lackey's denials.) Lafferty also requested cook Della Daniels to ask other employees if they would attend a union meeting (Tr. 62). Daniels agreed to do so. Although Murray appeared to be most reluctant to give testimony against the Respondent, she acknowledged that Daniels asked "if I was going to the

[2] I grant the General Counsel's March 2, 1984 motion to strike the Respondent's reply brief.

union meeting that Carol [Lafferty] was trying to put together" (Tr. 73). I discredit Daniels' denial that she ever mentioned Lafferty's name when she asked employees if they would attend a union meeting (Tr. 283–284).

On one occasion, Lafferty spoke about a union in the presence of Supervisor Janice Carrier (Owner Carrier's wife). Several of the employees were doing their cleaning at the beginning of the 2 p.m. shift when Janice Carrier commented that they needed to be more organized with their work. She was "just a few feet away" when Lafferty said, "Well, the only way that we could be more organized would be to form a union." (Tr. 35–36, 90–91.) Janice Carrier did not testify.

Owner Carrier was aware of the union organizing. He admitted that on the day he discharged Lafferty, when interrogating waitress Lackey about which employees were involved in the union organizing (as discussed below), he told Lackey that all he was hearing anymore was union talk (Tr. 216, 223).

There is no direct evidence that any of the employees informed Carrier that Lafferty instigated the union organizing. The evidence suggests, however, that cook Daniels revealed this to him after other employees cautioned Daniels about being fired because of her organizing efforts.

When cook Juanita Rowe reported to Carrier that Daniels had asked her if she was going to attend a union meeting, she informed Carrier that she told Daniels, "Dell, you're asking for trouble. You'll be a going out the door before it's over." (Tr. 279–280.) Also, when Daniels asked waitress Murray about going to the meeting Lafferty was seeking, waitress Lackey cautioned Daniels, "Shoosh, you'll get us all fired" (Tr. 63, 73). (Lackey, who was not on speaking terms with Lafferty at the time of the trial, denied even being present. I discredit this and the denials of her other personal involvement in the organizing (Tr. 109–111)).

After these employee warnings, Daniels decided to notify Carrier what she had been doing, apparently in an effort to protect her own job. As admitted by Carrier, Daniels, told him "I asked everybody if they wanted to go to a union meeting." For some reason, though, when called by the General Counsel after meeting the night before with Carrier and other witnesses, Daniels falsely denied ever saying anything to Carrier about the union talk (Tr. 64). Then when called the next day as a defense witness, Daniels gave the discredited denial that she ever mentioned Lafferty's name when asking employees to attend a union meeting.

Under these circumstances I infer that because Daniels was concerned enough about protecting her own job to report directly to Carrier that she had been asking employees if they wanted to go to a union meeting, she also informed him that it was Lafferty who had requested her to do this union organizing. I also infer that the reason Daniels gave the false and discredited testimony at the trial was her effort to support the owner's defense that he was not aware of Lafferty's union activity.

### 3. The summary discharge

On September 26, at the beginning of the 2 to 10 p.m. night shift, Owner Carrier called a meeting of the three waitresses to discuss problems on that shift and announced that the meeting was being tape-recorded. Contrary to his denials (Tr. 240), it is obvious that he recorded the meeting because of his decision to discharge Carol Lafferty.

A transcript of the tape recording shows that he began the meeting by stating (G.C. Exh. 3, page 1)

> And there was something the other night, Carol, that you said that sort of upset me that I, not upset me, but it's still sticking in my mind. When we were back there talking, you said that when somebody starts something, you just can't help from stirring it. And you all, I'm going to let you know that I don't like that attitude and I would like to know why you feel that way.

Lafferty did not know at first what he was talking about, Carrier stated it was the previous Thursday (September 22), when waitress Tonuia Murray was there at the waitress station, that Lafferty "said that when someone started something you just couldn't help from stirring it, that that was your nature."

Neither Murray nor Lafferty recalled it that way. Murray recalled (page 2) that Lafferty said "when something got started, people like to stir it" or "whenever something got started, the more you stirred in it . . . the worse it smelled." Lafferty remembered saying "the more you stirred it, the worse it smelled or something like that." Carrier continued to insist (contrary to what the two waitresses recalled) that Lafferty said "she couldn't help to just keep stirring it," and "by your nature . . . you couldn't help from just stirring it," or that "you couldn't help for stirring it." Lafferty said, "I don't know why I would have said it that way." She positively answered "No" when he asked, "Have you got that attitude?"

(At the trial, Lafferty credibly testified that she does use the expression, "The more you stir it the worse it stinks"; that she has used that expression at the restuarant; but that she has never stated she could not help stirring in problems (Tr. 50–51). Murray, one of the witnesses who met with Carrier the night before being called by the General Counsel to testify, changed her version of what Lafferty had said September 22. She claimed at the trial that Lafferty "said that she had a nature of stirring in it." (Tr. 74.) I discredit this claim as a fabrication to support Carrier's defense.)

Carrier then asked questions at the meeting (page 3) about employees becoming upset every 2 or 3 weeks, stating his belief that "It's not the front, it's the back. It's in the kitchen." After some discussion, Carrier asked about a problem that had caused Lafferty to be upset and to cry about 2 or 3 weeks earlier when the cook did not want to prepare certain items on the menu (Tr. 446–48). He asked waitresses Lackey and Lafferty (page 5) "are they still telling you that we're out of this, we're out of that, giving you a rough way to go about it?" Later when Carrier asked if one of the cooks was causing a problem, waitresses Murray (page 10) named two of the cooks who would bring up an incident the following day. Carrier responded (page 11), "That's exactly what

I'm talking about. Just stirring it and it's got to stop." (Nothing was said about any incident of Lafferty's stirring a problem.)

After the meeting, with the tape recorder still running, Carrier summarily discharged Lafferty, insisting (page 14) that she "said by nature or not exactly those words that when someone starts something that you just couldn't help from stirring it." She still questioned making such a statement, but Carrier repeated: "You said stirring it. We were talking about stirring it. You used that phrase and, Carol, I don't like that attitude." She agreed that that would be no attitude to have, but he proceeded to discharge her when she refused to quit. She said, "I believe you're wrong, but if that's the way you feel, I won't argue." He then added: "Carol, you get too upset. Just like the other day when you said you felt like the tension was so strong that you just couldn't work. You get tore up; you get upset and I surely don't like that kind of attitude."

4. Shifting defenses

As shown by the transcript of the September 26 meeting, Owner Carrier gave only two reasons for discharging waitress Lafferty. First he claimed, contrary to both her and waitress Murray's memory, that she said 4 days earlier that when somebody starts something, she could not help stirring it. Although she questioned making the statement, stated that she did not have that attitude, and agreed that such an attitude would be wrong, he continued to accuse her of making the statement, stated, "I don't like that attitude," and gave her the choice of quitting or being fired. Second, he added that he did not like "that kind of attitude," her getting too upset at work—referring to an incident 2 or 3 weeks earlier, caused by misconduct of kitchen personnel. (Assistant Manager Hurt admitted that cooks not wanting to prepare certain foods and falsely saying they were out of things was a major problem (Tr. 267). As Lafferty credibly testified (Tr. 49), however, the resulting tension on the job never prevented her from serving her customers.)

Apparently recognizing the weakness of these purported reasons for the summary discharge, Carrier claimed two other reasons in his pretrial affidavit for discharging Lafferty. The first, "her general bad attitude as displayed in the Caudill incident," was clearly fabricated. As discussed above, he admitted at the trial that this was not a reason for firing her—although he later again shifted his position when recalled as a defense witness, claiming it was a reason. The other purported reason was the afterthought, "her wanting to quit." He admitted in his pretrial affidavit that she last told him "she loved her job and wasn't going to quit."

At the trial Carrier made other discredited claims, which also were clearly mere afterthoughts. (As found above, he appeared willing to fabricate whatever evidence might help the Respondent's cause.) He continued to deny any knowledge of Lafferty's union activity.

5. Concluding findings

I agree with the General Counsel that "it is apparent that Carrier taped the meeting and discharge interview on September 26 in order to build a record to substantiate his proffered reasons for the discharge."

It is true that the word "union" was nowhere mentioned in the transrcipt of the meeting, but it is obvious that Carrier would not have summarily discharged this good, conscientious waitress in that manner if he was not discriminatorily motivated. (He admitted being opposed to a union in his restaurant.)

Without any prior warning, Carrier began the meeting by falsely accusing waitress Lafferty of having a bad attitude for saying 4 days earlier that when somebody starts something, she could not help from stirring it. Despite the recollection of Lafferty and waitress Murray (who had overheard the earlier conversation) that this was not what Lafferty had said, and despite Lafferty's assurances to him that she did not have such an attitude, Carrier held her after the meeting and discharged her for making the statement. Then, while the tape recorder was still running, he mentioned "the other day" that she got too upset (when kitchen personnel were falsely stating they were out of food on the menu), "and I surely don't like that kind of attitude."

I find these purported reasons for summarily discharging Lafferty were clearly pretexts.

Although Carrier denied having any knowledge of Lafferty's union activity, Lafferty had referred to a union in the presence of Carrier's wife; she spoke on the job to waitress Lackey and Murrary about a union, in the presence of waitress Chandler; at Lafferty's request, cook Daniels asked other employees if they would attend a union meeting; and at least on one occasion, Daniels mentioned Lafferty's name when soliciting attendance at a union meeting. Furthermore, after being warned by two employees that Daniels could be fired for organizing at the restaurant, Daniels admitted her union organizing to Carrier in an apparent effort to protect Daniels' job. Under these circumstances, as discussed above, I have inferred that Daniels did inform Carrier that it was Lafferty who had requested Daniels to do the union organizing.

Having considered the clearly pretextual nature of the reasons stated at the time for the discharge, the circumstances of the summary discharge, the false and shifting reasons asserted in the pretrial affidavit and at the trial, and the evidence supporting the inference that Owner Carrier was informed that waitress Lafferty had instigated the union organizing at the restaurant, I find that the Respondent discriminatorily discharged her to undercut the organizing effort, in violation of Section 8(a)(3) and (1) of the Act.

B. *Other Alleged Coercion*

About 7:30 p.m. on September 26, about 5 hours after he discharged waitress Lafferty, Owner Carrier spoke to waitress Lackey alone in a separate dining room. He asked her if she had heard anything about anyone wanting to form a union and asked about the union activity of the night-shift employees. Although Lackey had participated in or witnessed various conversations about a union, she admitted overhearing only one conversation, between cooks Daniels and Rowe (Tr. 94). When Carrier

specifically asked if she thought that Lafferty had anything to do with the union, Lackey falsely answered no. (To the contrary, as found above, Lafferty had discussed a union with Lackey and waitress Murray, in the presence of waitress Chandler, and Lackey had warned Daniels about getting fired when Daniels asked Murray if Murray was going to the union meeting that Lafferty was trying to put together.)

In the same conversation, Carrier mentioned a place where the employees had tried to start a union and stated that it did not work out, that the place was shut down, that a lot of people that had worked there for years were without jobs, and that a union would not work in a restaurant (Tr. 95–96, 105).

Carrier admitted talking to Lackey alone after Lafferty's discharge and asking her about the union activity of employees on the night shift (Tr. 215–217, 222–223). (According to him, he knew she was upset and he told her she was doing a very good job and had nothing to worry about. He also claimed that he was "just sort of trying to make small talk, just to sort of settle her," and that he did not know why he brought up the subject of "rumors floating around the restaurant about the union.") Concerning the mention of his experience of a union business closing, he claimed he remembered telling that story only to Assistant Manager Hurt, but "it wasn't hidden . . . and other people could have overheard me in that conversation" (169–170).

Particularly under the circumstances, I find that Carrier's interrogation of waitress Lackey was coercive.

Carrier was the sole owner and manager of the restaurant. He had summarily discharged the instigator of the union organizing a few hours before. He was talking to Lackey alone in a separate dining room, asking about the union activity of the night-shift employees. This was information that could be used against individual employees, or against all of them as a group. Lackey and cook Rowe had warned employee organizer Daniels about getting fired for asking employees to attend a union meeting; Rowe had reported to Carrier her warning to Daniels; and Daniels had attempted to protect her own job by going directly to Carrier and admitting her organizing activity. Lackey did not answer Carrier's questions truthfully.

I also find that Carrier's reference to his experience in the closing of a union business, causing the loss of jobs of many senior employeees, and his statement that a union would not work in a restaurant were a coercive implied threat to close the restaurant if it became a union.

Accordingly I find that interrogation of waitress Lackey and the implied threat of closure violated Section 8(a)(1) of the Act.

The complaint further alleges that the Respondent indicated to an employee that same day that it had to discharge an employee because of union activity. I find, however, that the testimony of cook Timothy Greer, on which the General Counsel relies to prove this allegation and further interrogation, is so confused and contradictory that I do not deem the testimony trustworthy enough to support any findings of a violation. I therefore find that this allegation must be dismissed.

## Conclusions of Law

1. By discriminatorily discharging Carol Lafferty September 26, 1983, for supporting a union, the Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By coercively interrogating an employee, the Respondent violated Section 8(a)(1).

3. By making an implied threat to close the restaurant if it became union, the Respondent violated Section 8(a)(1) of the Act.

4. The General Counsel has failed to prove that the Respondent indicated to an employee that it had to discharge an employee because of union activity.

## Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged an employee, it must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

## ORDER

The Respondent, Dan Carrier, Sole Proprietor, d/b/a Highland House Restaurant, Paintsville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or othewiser discriminating against any employee for supporting the United Steelworkers of America, AFL–CIO or any other union.

(b) Coercively interrogating any employee about union support or union activities.

(c) Threatening to close the restaurant if it becomes union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Carol Lafferty immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimina-

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

tion against her, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against her in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Paintsville, Kentucky copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employee are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."